[Case Title] In re: The Church of the New Convenant-Baptist, Debtor
[Case Number] 94-40624
[Bankruptcy Judge] Ray Reynolds Graves
[Adversary Number]XXXXXXXXXX
[Date Published] January 23, 1995

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF:

THE CHURCH OF THE NEW
CONVENANT-BAPTIST,

Debtor.

Case No. 94-40624-G
Chapter 11
HONORABLE RAY REYNOLDS GRAVES

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MEMORANDUM OPINION

Introduction

The matter before this Court involves matters of critical importance. This case involves a motion for sanctions and request for Debtor's attorney, Saunders V. Dorsey ("Dorsey") to pay movant's attorney's fees and costs, resulting from the Debtor's attorney alleged improper actions in filing the petition and subsequent pleadings.

Background

This bankruptcy proceeding has its roots in a bond offering that was underwritten in order to finance the Debtor's acquisition of commercial property for a church site. Pursuant to that bond sale, the bondholders received a first mortgage on the Debtor's property. Shortly thereafter, the Debtor defaulted on its payment obligations under the bond and mortgage. As a result, the trustee for the bondholders, initiated foreclosure proceedings.

Shortly before the scheduled foreclosure sale, Dorsey initiated a lawsuit in the Wayne County Circuit Court naming James Anderson ("Anderson"), trustee under the Trust Indenture, Alanar Investment Corporation ("Alanar") as the bond registrar, and Vaughn Reeves ("Reeves") as a principal of Alanar. Foreclosure of the church party was forestalled on a temporary basis via a temporary restraining order. The

causes of actions were subsequently removed to the United States District Court for the Eastern District of Michigan, where the lawsuit continued to stagnate absent discovery or any other effort to prosecute the respective actions.

On January 14, 1994, the state court dissolved the temporary restraining order, in part because Dorsey failed to appear for the dissolution hearing. Instead, Dorsey sent an attorney who appeared to be completely unfamiliar with the case and who failed to offer any support for the continuation of the injunctive relief.

On the heels of that dismissal, Debtor's attorney filed for protection pursuant to Chapter 11 of the United States Bankruptcy Code. The Creditors in this case argue that as a result of Dorsey's actions and inactions throughout these proceedings that creditors Anderson, Alanar and Vaughn Reeves have incurred unnecessary attorney's fees and costs. Plaintiffs assert that Dorsey filed Debtor's petition in bad faith and continuously caused creditors to have to respond and appear for unfounded, unsubstantiated motions where Dorsey himself failed to appear. Such motions, according to the creditors, were designed to harm and discourage creditors from pursuing their rightful court remedies.

At some point, Saunders Dorsey was dismissed by the Debtor and replacement counsel, Terrance Keith, acting promptly, filed a motion on or about July 18, 1994 to disgorge attorney's fees and for sanctions and costs against Saunders V. Dorsey. The motion questioned the appropriateness of Saunders Dorsey's actions in filing a chapter 11 petition with his limited knowledge and apparent total negligence in handling the case.

The motion indicated that on November 22, 1993, Reverend T. Cortez Span, President, New Covenant, discussed with Dorsey representation of New Covenant in a Chapter 11 Bankruptcy to stave off an impending foreclosure proceeding commenced by James O. Anderson, Jr., trustee under the Trust Indenture.

The Debtor and Dorsey agreed upon a $7,500.00 retainer fee. According to the testimony of Reverend Cortez Span the Bankruptcy would be handled by Saunders Dorsey and his staff alone. Contrary to this agreement, the chapter 11 bankruptcy petition, schedules and statement of financial affairs were filed on behalf of the Debtor by another attorney. The signature on the pleadings and schedules were purported to be that of John Catchings, as attorney for Debtor, and Dr. T. Cortez Span on behalf of the Debtor. Dorsey apparently directed the signatures on the petition to be signed by a third party. Both Dr. Span and Catchings deny the signatures on Debtor's petition. Permission for a third party to sign their name was never granted. Sadly, this case has many failures and omissions.

Upon filing of the bankruptcy petition, Dorsey had a continuing obligation to represent and defend the interests of the Debtor until further order of the court. However, Dorsey failed miserably in this respect. Dorsey failed to represent the Debtor at the initial 341 Meeting of Creditors, as he did not appear. Dorsey also failed to appear at the adjourned hearing. In fact, Dorsey failed to appear, defend, or file a response to any motion, pleading or other legal proceeding in connection with this chapter 11 bankruptcy.

The egregious behavior of Dorsey continues. Debtor asserts that Dorsey failed to review or communicate to Reverend Span the duties of the debtor-in-possession as provided in 11 U.S.C. §1107. Dorsey also advised and instructed Reverend Span, not to remit post-petition payments to Anderson. In reliance upon that advice, the Debtor did not remit any post-petition payments to creditors, which later became a basis for this Court's order granting Anderson's motion to lift stay.

After botching all aspects of this case on March 16, 1994, three months after the petition had been filed and five months after receiving his retainer, Dorsey confessed to the Debtor that he was not qualified to represent the Debtor in the chapter 11 proceeding and suggested that the Debtor obtain new counsel.

Creditors James Anderson, Alanar Investment Corporation and Vaughn Reeves filed joint motions for orders sanctioning and requiring Debtor's, attorney Saunders V. Dorsey, to pay movant's attorney's fees

and costs alleging that Dorsey's actions, inactions and omissions have required movants to expend substantial attorney's fees and costs to protect their rights in this matter. Creditors assert that Dorsey has filed papers without serving them on movants, has requested hearings at which he has failed to appear, and has otherwise failed to follow rules and procedures of this Court. Dorsey's alleged omissions and inactions include:

(a) The Court scheduled the Meeting of Creditors for 10:00 a.m. on February 23, 1994. Dorsey and Debtor failed to appear at the Meeting of Creditors. John Catchings came to the hearing and informed movants that Dorsey had filed the voluntary petition and that Dorsey was attorney of record for Debtor.

(b) The Trustee filed a motion to dismiss the bankruptcy. The Court set a hearing on the motion to dismiss for Monday, April 18, 1994 at 9:30 a.m. Dorsey failed to appear at the hearing.

(c) The Court rescheduled the Meeting of Creditors for Wednesday, May 11, 1994. Dorsey failed to appear at the Meeting of Creditors. The Debtor appeared and testified that Dorsey was Debtor's attorney of record.

(d) Movant Anderson filed a motion for relief from the automatic stay on March 18, 1994. Dorsey filed a request for hearing for the Debtor, requesting an oral hearing on Anderson's motion for relief from the automatic stay, stating that Debtor would submit a responsive brief. Although Dorsey filed the request for hearing with the Bankruptcy Court, he failed to serve it on counsel for Anderson.

(e) Dorsey did not file a responsive brief as he stated in his request for hearing that he intended to do. The court was nevertheless required to schedule a hearing on the motion for relief from the automatic stay.

(f) The Court set a hearing on Anderson's motion for relief from the automatic stay for Thursday, May 12, 1994. Dorsey did not appear at the hearing, requiring rescheduling of the hearing.

(g) The Court rescheduled the hearing on Anderson's motion for relief from automatic stay for Thursday, June 9, 1994. Dorsey failed to attend the hearing.[1] The court granted the motion and allowed the foreclosure to proceed. Dorsey also failed to submit a chapter 11 plan for Debtor or to file any operating reports with the U.S. Trustee as required.

Applicable Law

Under Fed. R. Bankr. P. 9011,

> (a) Signature. Every petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name, whose office address and telephone number shall be stated. A party who is not represented by an attorney shall sign all papers and state the party's address and telephone number. The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well-grounded in fact and is warranted by existing or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or administration of the case. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person whose signature is required. If a document is signed in violation of this rule, the court on motion or its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

[1] *By this time in the proceedings, Terrance Keith had appeared for Debtor. Movants, of course, do not seek any sanctio*

Thus, in filing pleadings, an attorney represents that he has taken special care in reviewing and investigating the circumstances of the matters involved. Saunders Dorsey failed such duties as required under the rule. Therefore, as in this case, when a court finds that a bankruptcy petition has been filed in violation of Rule 9011, the imposition of sanctions is mandatory. INVST Financial Group v. Chem-Nuclear Systems, 815 F.2d 391, 401 (6th Cir. 1987) (emphasis supplied). Moreover, the excuse of "poor heart but empty head" is unacceptable. Eavenson Auchmuty & Greenwald v. Holtzman, 775 F.2d 535 (3rd Cir. 1985).

Discussion

Although this Court is inclined to agree with Dorsey's strenuous argument that his actions in filing a chapter 11 petition on behalf of the Debtor to stave off foreclosure is not indicative of bad faith and is permissible within the law, this court finds that Dorsey's conduct falls far below the minimal standard of conduct, attention, and diligence required of counsel.

After reviewing certain pleadings and many documents filed in this case, Dorsey admits that he either gave a cursory review or neglected to review the pleadings, schedules, motions or briefs associated with Debtor's chapter 11 case. Dorsey's testimony contained continuous recitations that "I didn't review the pleading," or that "I directed a paralegal to draft and sign the pleading." Such assertions are ludicrous. Dorsey has been a practicing attorney for several years. Dorsey's attempts to absolve himself of any liability by stating that he did not review pleadings, but yet, directed a paralegal to draft certain pleadings and to sign his name violates all principles of appropriate ethical conduct.

In determining whether to impose Rule 11 sanctions, this Court must determine whether Dorsey's conduct was reasonable under the circumstances. Mihalik v. Pro Arts, Inc., 851 F.2d 790 (6th Cir. 1988). In doing so, the court can look to numerous factors, such as: (1) the time available to the signor for investigation; (2) whether the signor had to rely on a client for information as to the facts underlying the pleading, motion or other paper; (3) whether the pleading, motion, or other paper was based on a plausible

view of the law; or (4) whether the signor depended on forwarding counsel or another member of bar. Pro Arts, Inc., 851 F.2d at 792.

It appears as if this attorney took a retainer's fee from a distressed Debtor and attempted to pass the liability and work on to other parties, some of whom are not licensed to practice law in Michigan. The cavalier attitude of Dorsey does not excuse his many failures and omissions. Dorsey clearly lacked any understanding of the chapter 11 process.[2] Saunders Dorsey did not demonstrate the ability, desire or concern to file a chapter 11 petition on behalf of the Debtor.

It is obvious to this Court that Dorsey does have an understanding of where to obtain competent bankruptcy counsel when necessary, as he found such counsel for himself. Dorsey's protestations that he merely attempted to save a church from foreclosure falls upon deaf ears. He obviously was driven by money and failed this Debtor in its hour of need.[3] The filing of chapter 11 cases is relegated to certain experts requiring highly specialized skills and is not to be undertaken by those driven by money and who lack a desire to properly serve the debtor.[4]

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RAY REYNOLDS GRAVES, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

Date: _____

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[2] *When questioned about the meaning of cash collateral, a commonly used term in bankruptcy, the definition of which d understanding of bankruptcy law, Dorsey failed to demonstrate such understanding of the term.*

[3] *This Assistant U.S. Trustee, Claretta Evans, who was present in the courtroom was directed to make a referral to the St Attorney's Office for possible criminal prosecution.*

[4] *See e.g. In re Doors and More, Inc., 126 B.R. 43 (Bankr. E.D. Mich. 1991).*

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